

1 Commission letter dated November 3, 1991, signed, I believe,
2 by Larry Eades.

3 BY MR. SHUBERT:

4 Q Would you read that letter to yourself, Mrs.
5 Constant? Does that letter make reference to a letter from
6 Cynthia Syracuse as of November 5, 1991?

7 A Yes it does.

8 Q Do you recall whether or not you may have had
9 discussions with counsel at or about that time concerning the
10 status of the settlement agreement for Eagle, Idaho?

11 A Yes, I think quite a few, because you were tracking
12 the situation.

13 Q Would it have been about that time we -- that you
14 learned that --

15 MR. FITCH: Your Honor, objection. He's leading
16 her.

17 MR. SHUBERT: I didn't finish the question. Let me
18 try to rephrase the question, Your Honor.

19 MR. SHUBERT: Did counsel provide you information as
20 to what the likely outcome would have been with respect to
21 that settlement agreement?

22 MR. FITCH: That -- Your Honor, that's leading too.
23 It suggests an answer.

24 MR. SHUBERT: Well, it suggests a yes or a no
25 answer, Your Honor.

1 JUDGE LUTON: That, that's not leading. That's not
2 leading. Did counsel suggest to you? Did he? Yes or no.

3 MRS. CONSTANT: Yes. Yes he did.

4 BY MR. SHUBERT:

5 Q And what did he tell you about it?

6 A That it was going to be granted. There was no
7 problem.

8 MR. SHUBERT: Your Honor, if I may for the record, I
9 will -- I'm not -- I don't intend to move that letter into
10 evidence, but would ask that official notice be taken of it.
11 If anyone needs to refer to it at a future time.

12 JUDGE LUTON: Okay. It'll be noticed.

13 BY MR. SHUBERT:

14 Q Mrs. Constant, since Friday -- last Friday, November
15 12th, 1993, has the financial plan for Moonbeam changed?

16 A No.

17 Q Has the funding in Moonbeam's account changed?

18 A Yes, the funding has changed.

19 Q And how did that -- and, and how did that change?

20 MR. FITCH: Your Honor, this has been asked and
21 answered already.

22 JUDGE LUTON: All right. I, I've heard it somewhere
23 before today. I don't know where -- through whom I heard it,
24 whether it was there or there. Go ahead. Get an answer to
25 the question. I don't really care about an objection like

1 that at this time of day. Go ahead.

2 MR. SHUBERT: There were questions from Mr. Fitch
3 concerning the pleading that was made, I believe, sometime
4 around August 30th, 1993.

5 MR. SHUBERT: Is that correct, Mr. Fitch?

6 MR. FITCH: I believe so.

7 MR. SHUBERT: Just trying to pin the dates down.

8 BY MR. SHUBERT:

9 Q As of August 30th, 1993, was Moonbeam fully funded?

10 A Yes.

11 Q Well, was --

12 A Oh, you mean the --

13 Q Were the funds fully in Moonbeam's account?

14 A As of --

15 Q August 30th, 1993?

16 A No. The funds weren't in Moonbeam's -- the Moonbeam
17 account then.

18 Q Have the circumstances with respect to the location
19 of the funds for Moonbeam changed between August 30th and
20 today?

21 A Yes, I've moved the funds.

22 MR. SHUBERT: At this time, Your Honor, I don't
23 believe I have any further redirect.

24 MR. FITCH: Your Honor, two questions.

25 JUDGE LUTON: Yes.

RECROSS-EXAMINATION

BY MR. FITCH:

Q Ms. Constant, did you ever advise the Commission that you had no intention of prosecuting the Eagle, Idaho, application?

A In January of 1992, yes.

Q That -- in January of 1992, what, what happened in January of 1992? What did you advise them of that?

A That's when the settlement was approved.

Q Right.

A Or the --

Q Did you, did you at any time prior to that time tell the Commission, I, I'm filing an application for Calistoga. I'm not interested in prosecuting --

MR. SHUBERT: I'm going to objection, Your Honor.

MR. FITCH: -- the Eagle --

MR. SHUBERT: In the, in the fact that the settlement agreement was filed and it said she was going to dismiss her application if approved.

MR. FITCH: Let, let me ask you about the settlement agreement.

JUDGE LUTON: That's not an evidentiary objection. I mean, you may be arguing with the facts and what they may mean. That's one matter, but that's not an evidentiary objection.

1 MR. SHUBERT: I'll object to the characterization --

2 JUDGE LUTON: -- overrule -- you object to what?

3 MR. SHUBERT: Characterization of the question. The
4 way the question is framed.

5 JUDGE LUTON: What's, what's objectionable about
6 that?

7 MR. SHUBERT: Well, it is in evidence so I'll, I'll
8 state the objection, but just for the record.

9 JUDGE LUTON: But you won't state what the objection
10 is. That's okay with me.

11 MR. SHUBERT: That the way it's characterized is
12 he's characterizing the fact that she had never made a -- any
13 notice to the Commission that she didn't intend to prosecute
14 the application. And, in fact, we already have testimony that
15 a settlement agreement was filed and the settlement agreement
16 says I'm going to dismiss if the settlement's approved.

17 JUDGE LUTON: I -- your, your so-called objection is
18 a bunch of argument and I don't think that the question
19 characterized anything. It sought an answer which it never
20 got. Overruled, whatever kind of objection that was. And ask
21 your question again, Mr. Fitch, if you need to. I didn't hear
22 any improper characterization at all.

23 MR. FITCH: Well, I'm not -- I'm not sure --

24 JUDGE LUTON: All I heard was whether or not the
25 witness has ever advised the Commission prior to January 1992

1 that she was no longer interested in prosecuting her Eagle,
2 Idaho, application.

3 MR. FITCH: That is correct. That is the question.
4 I'm not sure --

5 JUDGE LUTON: That's all I heard. I'm sorry?

6 MR. FITCH: That was the question. I'm not sure it
7 was answered or not. I don't think it was.

8 JUDGE LUTON: I don't think it was.

9 MRS. CONSTANT: No, I didn't.

10 BY MR. FITCH:

11 Q Now, your agreement you filed with the Commission,
12 the settlement agreement, was a contingent agreement, wasn't
13 it? Do you understand what I mean by that?

14 A I'm not a lawyer. If you say so.

15 Q Well, I mean, you weren't going to dismiss your
16 application unless the agreement was approved, were you?

17 A Are you asking me if I was going to -- if it wasn't
18 approved, was I going to continue on with the Eagle, Idaho,
19 application?

20 Q What -- no. I'm asking what the settlement
21 agreement said. Do you recall?

22 A No, I don't.

23 MR. FITCH: That's all I have, Your Honor.

24 JUDGE LUTON: All right. Thank you, Ms. Constant.
25 You may step down -- once again. All right. I'm going to

1 close the record here again in this case. There's no telling.
2 I'll probably get several more Petitions to Enlarge Issues.
3 That seems to be the way this one works. I've got one --
4 Opinion and Order that's owed to the parties. It's on its
5 way; you'll get it soon. It denies a Request for Issues made
6 by Moonbeam against Willson, staffing issue I believe. I'm
7 going to need to get some dates here for those findings just
8 in case. And I'm going to go off the record and let the
9 parties decide when they want to submit those findings. I'll
10 accept whatever they come up with.

11 (Off the record briefly.)

12 JUDGE LUTON: Let's go back on the record here. The
13 parties are going to submit closed findings by January 19,
14 1994, and reply to proposed findings by February 2nd. The
15 record is closed.

16 (Whereupon, at 2:40 p.m., the proceeding was adjourned.
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CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER

APPLICATIONS OF MOONBEAM, INC. AND GARY E. WILLSON

Name

MM DOCKET NO. 93-42

Docket No.

WASHINGTON, D.C.

Place

NOVEMBER 15, 1993

Date

We, the undersigned, do hereby certify that the foregoing pages, numbers 271 through 401, inclusive, are the true, accurate and complete transcript prepared from the reporting by ALICE WEHNER in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

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